

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-H-10722-RAH
)	
SCOTT K. HILDEBRANT,)	DECISION
)	
Member No. 142892,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this reproof violation proceeding, respondent **SCOTT K. HILDEBRANT** is found culpable, by clear and convincing evidence, of violating conditions attached to a public reproof previously imposed on him by the State Bar Court.

The court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 days and until the State Bar Court grants a motion to terminate respondent’s actual suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

On April 13, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served a Notice of Disciplinary Charges (NDC) on respondent. (Rules Proc. of State Bar, rule 60.) A certified mail receipt was received by the State Bar on April 17, 2006, bearing a signature with the last name, “Hildebrandt.” Respondent did not file an answer to the NDC. (Rules Proc. of State Bar, rule 103.)

On May 9 and May 11, 2006, the State Bar attempted to reach the respondent by telephone at his official membership records telephone number. On both occasions, a recording at that number indicated that the number was for “Scott” and instructed the caller to leave a message. The deputy

trial counsel, who made the calls on behalf of the State Bar, left a message on each occasion including her name and telephone number. Respondent did not return either of the State Bar's calls.

On May 17, 2006, the State Bar filed and properly served the First Amended NDC on respondent by certified mail, return receipt requested, at his official membership records address (official address). On May 22, 2006, a return receipt was received by the State Bar bearing an illegible signature.

On May 19, 2006, the State Bar telephoned respondent at his official membership records telephone number. The deputy trial counsel calling on behalf of the State Bar received the same recorded message that she had received on May 9 and May 11, 2006. As on the previous two occasions when she had telephoned respondent, the deputy trial counsel left a message including her name and phone number. Respondent did not respond to the message.

On May 23, 2006, the State Bar again called respondent at his official membership records telephone number. A man answered the phone and identified himself as respondent. He stated that he did not intend to respond to the disciplinary charges. The deputy trial counsel, who made the call on behalf of the State Bar, reminded respondent that his answer was due by June 12, 2006, and encouraged him to participate in the disciplinary proceedings. Respondent did not file a response to the First Amended NDC.

On motion of the State Bar, respondent's default was entered on June 29, 2006. Respondent was enrolled as an inactive member under Business and Professions Code, section 6007(e)¹ on July 2, 2006.

Respondent did not participate in the disciplinary proceedings.

The court took this matter under submission on July 7, 2006, after the filing of the State Bar's brief on discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule

¹References to section are to Business and Professions Code, unless otherwise noted.

200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 11, 1989, and has since been a member of the State Bar of California.

B. Findings of Fact

In December 2004, respondent and the State Bar entered into a stipulation regarding facts and disposition in State Bar Court case No. 01-O-03962. On January 5, 2005, the State Bar Court approved the stipulation and imposed upon respondent discipline consisting of a public reproof with attached conditions (order) for a period of one year.

On January 5, 2005, the order was properly served on respondent at his official address. It became effective on January 26, 2005.

The order required respondent to comply with conditions of the reproof for one year, including:

1. Reporting to the Membership Records Office and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
2. Submitting written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation during which the public reproof is in effect, stating under penalty of perjury that he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter and to file a final report no earlier than 20 days prior to the expiration of the reproof period and no later than the last day of the period;
3. Answering fully, promptly, and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under the conditions attached to the reproof, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the

conditions attached to the reproof.

4. Making restitution to Sidney Parks or the Client Security Fund, if appropriate, in the amount of \$2,800, plus 10% interest per annum accruing from August 10, 1999, and providing proof thereof to the Probation Unit, Office of the Chief Trial Counsel, no later than November 30, 2005.

As of May 17, 2006, the filing date of the First Amended NDC, respondent did not comply or did not timely comply with the following conditions² of his public reproof:

1. Respondent did not timely file the quarterly reports due on April 10, July 10, and October 10, 2005. Instead on November 22, 2005, respondent filed the reports due on April 10, July 10, and October 10, 2005;
2. Respondent did not file the quarterly report due January 10, 2006;
3. Respondent did not file the final report due January 26, 2006;
4. Respondent did not make restitution to Sidney Parks; and
5. Respondent did not cooperate with the Probation Unit by promptly reviewing and complying with the terms and conditions of his public reproof.

Therefore, respondent has not complied with the conditions of the public reproof imposed by this court's order.

C. Conclusions of Law

Rule 1-110 of the Rules of Professional Conduct³ requires members of the State Bar to

²Contrary to the allegation in the First Amended NDC that respondent failed to report to the Membership Records Office and to the Probation Unit changes of information regarding his current office address or telephone number, the evidence demonstrates that respondent did not make changes regarding his office address or telephone number which required reporting. The declaration of the deputy trial counsel (DTC) in support of the State Bar's motion for entry of default (Declaration), filed on June 13, 2006, is replete with facts indicating that there were no changes of information pertaining to respondent's official membership address or phone number that respondent was required to report. In fact, the Declaration shows that mail addressed to respondent's official address was not returned as undeliverable and that the State Bar spoke with respondent by telephone at his official membership telephone number.

³References to rules are to the current Rules of Professional Conduct, unless otherwise noted.

comply with conditions attached to reprovais.

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 1-110 in that he failed to comply with conditions of his reproval.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating factor. (Std. 1.2(b)(i).) In the underlying matter, respondent was publicly reprovied with conditions for failing to perform legal services with competence and for failing to render appropriate accounts to a client regarding funds of the client coming into respondent's possession. (State Bar Court case No. 01-O-03962, effective January 26, 2005.)

Respondent committed multiple acts of wrongdoing. (Std. 1.2 (b)(ii).) He failed to timely file the quarterly reports due on April 10, July 10, and October 10, 2005; he failed to file the quarterly report due January 10, 2006; he did not file the final report due January 26, 2006; he did not make restitution to Sidney Parks; and he failed to cooperate with the Probation Unit by promptly reviewing and complying with the terms and conditions of his public reproval.

Respondent harmed Sidney Parks (Parks), his former client's father, by failing to pay restitution, thereby depriving Parks of the funds. Respondent also harmed the administration of justice as his failure to comply with the conditions of his reproval made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

⁴All further references to standards are to this source.

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved failure to comply with probation conditions attached to a reproof.

Standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding. Standard 2.9 provides that an attorney's wilful violation of his duty under rule 1-110 to comply with the conditions attached to a reproof imposed on the attorney by the State Bar Court will result in suspension.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.) The court will look to the applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains "grave doubts" as to its propriety. (*Ibid.*; *In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for imposing discipline, there is "no reason to depart from them in the absence of a compelling reason to do so. [Citation.]" (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar, citing *Conroy v. State Bar* (1990) 51 Cal.3d 799 and *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, urges two years' stayed suspension and a probation with conditions that include a 90-day actual suspension. The court agrees with the State Bar's recommendation, except as to imposition of probation. In a default proceeding, "the appropriate time to consider imposing probation and its attendant conditions is when the attorney

seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding.” (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110.)

The court also finds *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 analogous to the instant matter and, thus, instructive.

In *Meyer*, an attorney who had two prior records of discipline (private reprovais) was actually suspended for 90 days with a two years’ stayed suspension for failing to comply with the private reprovail conditions imposed on him in his second prior record. The attorney violated the same probation conditions attached to his first and second prior record of discipline.

In a similar default case, *In the Matter of Stansbury, supra*, 4 Cal. State Bar Ct. Rptr. 103, the attorney was suspended for two years, stayed, and actually suspended for 90 days and until he makes restitution to his former client in the sum of \$750 and until his suspension terminates under rule 205 of the Rules of Procedure of the State Bar for his failure to comply with the conditions attached to his public reprovail. Although the underlying conduct of the attorney in *Stansbury* was more serious than that of the attorney in *Meyer*, the Review Department noted: “[W]e are not measuring discipline for the underlying misconduct, which discipline was measured in *Stansbury*’s initial proceeding. Rather, we measure appropriate discipline for the similar offence of *Stansbury*’s failure to comply with conditions in a reprovail.” (*Id.* at p. 109.) *Stansbury* had one prior record of discipline, wherein he also defaulted.

As in *Stansbury*, respondent defaulted in this matter and has a single prior disciplinary matter. Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to participate in this proceeding leaves the court without information about the underlying cause of respondent’s misconduct or any mitigating circumstances surrounding his misconduct.

In view of respondent’s misconduct, the case law, the standards, and the aggravating evidence, placing respondent on actual suspension for 90 days would be appropriate to protect the public and preserve public confidence in the profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **SCOTT K. HILDEBRANT** be suspended from the practice of law for two years, that said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205).

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is further recommended that the Supreme Court order respondent to comply with rule 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

It is also recommended that if respondent is actually suspended for two years or more, he will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Exam Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319/337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the Supreme Court order or during the period of his actual suspension, whichever is longer. Failure to pass the MPRE within the specified time may result in actual suspension by the Review Department, without further hearing, until passage. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn.8.)

⁵Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: September ____, 2006

RICHARD A. HONN
Judge of the State Bar Court